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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.R. No. 99 of 1992
Date of decision: 10.8.2007

The Commissioner of Income-Tax, Jalandhar

...Petitioner

Versus

M/S Rais Ahmed & Co.

...Respondent

CORAM: HON'BLE MR.JUSTICE M.M.KUMAR
HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr.Sanjiv Bansal, Advocate for the petitioner

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RAJESH BINDAL,J.

Following questions of law has been referred for opinion of this Court by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (for short "the Tribunal), arising out of order passed in I.T.A.No. 391/ASR/1988 in respect of the assessment year 1983-84 :-

> Whether on the facts and in the circumstances of the case, the Tribunal has been right in in law in partly sustaining the order of the CIT passed under section 263 by holding that the unrecorded purchases were financed out of the unrecorded sales made by the assessee?"

Briefly the facts are that the respondent-assessee was a registered firm deriving income from business of purchase and sale of cloth on retail basis. For the assessment year 1983-84, return of income was filed on July 27, 1983 declaring income at Rs. 59,570/, which was assessed under Section 143(3) of the Income Tax Act, 1961 (for short 'the Act") on Feburary 4, 1986 at an income of Rs.87565/-. Certain discrepancies were

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found during the course of assessment with regard to detail of purchase and sale etc. The assessment order was examined by the Commissioner of Income Tax (for short "the CIT") suo-motu under Section 263 of the Act, the order being erroneous and prejudicial to the interest of revenue. During the course of proceedings before the CIT under Section 263 of the Act, it was explained by the assessee that part of the purchases were duly recorded in the books of accounts and part of purchases, which were not recorded were financed through the sale effected out side the books of accounts. The CIT, accordingly, set aside the assessment and referred the case back to the Assessing Officer for fresh assessment, after affording reasonable opportunity to the assessee. Aggrieved against the order, the assessee preferred an appeal before the Tribunal, who partly allowed the appeal vide order dated April 19, 1990. It is out of this order of the Tribunal, out of which the question of law has been referred to this Court for opinion.

A perusal of the order passed by the Tribunal shows the factual details of each and every transaction of purchases and finance thereof, which were out of books of account, was examined by the Tribunal and a definite finding of fact was recorded to the effect that the source of purchases, which were kept out side the books of account, stood fully explained and no addition on this account was called for. However, this was subject to verification about the compliance of provisions of Section 40-A (3) of the Act. With this discussion, the Tribunal set aside the order of CIT passed under Section 263 of the Act, however, on account of alleged violation of Section 40-A(3) of the Act for cash payments in excess of Rs.2500/- was concerned, order of CIT under Section 263 of the Act was upheld wherein the matter was remanded back to the Assessing Officer for fresh assessment.

Learned counsel for the revenue submitted that the findings of facts recorded by the Tribunal whereby the explanation of the assessee to the effect that purchase of goods out side the books of account was financed from sale thereof outside the books of account, are perverse. There was enough material to hold that the assessing officer, having not examined the details during assessment proceedings, the order passed by

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the Assessing Authority was prejudicial to the interest of revenue and accordingly, order passed under Section 263 of the Act was liable to be upheld. The contention made by learned counsel for the Revenue cannot be accepted. Learned counsel for the revenue was not able to show as to what material in addition to what has been considered by the Tribunal to record a finding against the revenue was not considered while accepting the explanation of the assessee. A perusal of the order shows that each and every transaction with each and every dealer, the alleged parties from whom material was purchased out side the books of account, was considered by the Tribunal before recording a finding thereon. Under these circumstances, we do not feel findings recorded by the Tribunal are perverse. On the legal issue of violation of Section 40-A(3) of the Act, the order passed under Section 263 of the Act passed by the CIT was upheld.

For the reasons recorded above, the question referred is answered against the revenue and in favour of the assessee.

The reference is disposed of accordingly.

(Rajesh Bindal)
Judge

August 10,2007
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(M.M.Kumar)
Judge